No. 835

CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

JOHN MANGIARACINO,
Petitioner,

vs.

LACLEDE STEEL COMPANY,
a Corporation.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Missouri,

and

SUPPORTING BRIEF.

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INDEX.

Page

Petition for writ of certiorari 1-13

Statement of proceedings 2

Summary and short statement 5

Specifications of error 9

Opinion of the court below 9

Jurisdiction of this Court 9

Summary of reasons for the allowance of the writ .. 11

Prayer for writ 12

Supporting brief 14-22

Points 14

Argument 15

I. The applicability of the Illinois Compensation Act was not open to question, since there was a final judicial determination of this question by a court of competent jurisdiction 15

II. The judgment of the Supreme Court of Missouri entered on the 11th day of December, 1940, reversing outright the judgment of the Circuit Court of the City of St. Louis, Missouri, is a final judgment of Missouri 19

Conclusion 22

Cases Cited.

Abbott v. Kansas City Elevated Ry. Co., 232 Mo. 616, 135 S. W. 1199 ..... 5, 10, 14, 20

American Express Co. v. Mullins, 212 U. S. 311 .. 10, 14, 17

Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406 ..... 5, 11, 14, 20
Donnell v. Wright, 199 Mo. 304, 97 S. W. 928 ... 5, 10, 14, 20
Fauntleroy v. Lum, 210 U. S. 230 ..... 10, 14, 16
Ginnochio v. Ill. Cent. Ry. Co., 264 Mo. 516, 175 S. W. 196 ..... 5, 10, 14, 20
Hamil v. Talbot, 72 Mo. Ap. 22 19
Holland v. Ry., 36 S. W. 29 18
Howey v. Howey (Mo. Sup.), 240 S. W. 450 18
Hudson-Kimberley Publishing Co. v. Young, 90 Mo. Ap. 505 ..... 18, 19
Mangiaracino v. Laclede Steel Company (Mo. Sup. Ct.), 145 S. W. (2) 388 ..... 5, 9
Payne v. O'Shea, 84 Mo. 129, 135 18
Sabol v. St. Louis Cooperage Co. (Mo. Sup.), 31 S. W. (2) 1041 ..... 5, 11, 14, 21
Strottman v. St. Louis I. M. & S. Ry. Co., 228 Mo. 154, 128 S. W. 187, 30 L. R. A. (N. S.) 377 ..... 5, 11, 14, 20
Walsh Const. Co. v. United States Guaranty Company (C. C. A. 8), 76 Fed. (2) 240 ..... 5, 11, 14, 21
U. S. ex rel. Bank v. Lufcy, 329 Mo. 1224, 49 S. W. (2) 8 18

Textbook Cited.

Restatement, Conflict of Laws, Chap. 10, Sec. 431 .... 14, 18

Statutes Cited.

Constitution of the United States, Sec. 1, Art. IV 4, 9, 14, 16, 19
Judicial Code, Sec. 237, as amended by Act of Feb. 13, 1925, 43 Stat. 937, U. S. Code, Title 28, Sec. 344, Par. (B) 9
R. S. Missouri 1929, Secs. 1063 and 1065 ..... 5, 10, 14, 19, 20

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LACLEDE STEEL COMPANY,
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PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Missouri.

To the Hon. Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now John Mangiaracino, petitioner, and respectfully petitions this Honorable Court to grant a writ of certiorari to the Supreme Court of the State of Missouri, and to remove therefrom to this Court for review the record in the case lately pending in said Supreme Court of the State of Missouri styled John Mangiaracino, Respondent, v. La-

clede Steel Company, a Corp., Appellant, being Cause No. 37,172 on the docket of the said Supreme Court of the State of Missouri, the duly certified record including all the proceedings of the Circuit Court of the City of St. Louis, Missouri, where said cause was tried, and in the St. Louis Court of Appeals, to which an appeal was taken by the said Laclede Steel Company from the judgment of the trial court, and in the Supreme Court of the State of Missouri, to which court said cause was transferred, is filed herewith.

Your petitioner represents that he has been aggrieved by the judgment of the Supreme Court of the State of Missouri entered in said cause, wherein the said Supreme Court of the State of Missouri reversed the judgment of the trial court, and on the 11th day of December, 1940, thereafter, denied this petitioner's motion for rehearing in said cause and rendered its final judgment reversing the judgment of the trial court.

Your petitioner states that the matters at issue in said cause are of a federal nature, and are of peculiar gravity and importance in that your petitioner has claimed rights and privileges under the Constitution of the United States, Article IV, Section 1, and the decision of the Supreme Court of the State of Missouri complained of is in direct conflict with the applicable decisions of this Honorable Court upon the questions involved, and upon the principles announced by this Court in those decisions.

STATEMENT OF PROCEEDINGS.

This was a suit to recover damages for a personal injury, and was instituted in the Circuit Court of the City of St. Louis, Missouri, by your petitioner, John Mangiaracino, to recover for personal injuries sustained by him on May 1, 1936, as a result of specified allegations of negligence of the Laclede Steel Company.

In the trial court the case was tried on the plaintiff's amended petition, which alleged that this petitioner, on or about May 1, 1936, was in the employ of the Laclede Steel Company, in its mill in Granite City, Illinois, and that on that date plaintiff was in and upon the premises at and near a hotbed known and numbered as hotbed No. 2; that while plaintiff was exercising ordinary care for his own safety, and while immediately adjacent to the machinery of this hotbed, the machinery, motor and rollers did suddenly, unexpectedly and without warning start in motion and move, and plaintiff's left foot was caught therein, and he was caused to sustain injuries as specified in the petition. The petitioner charged the Laclede Steel Company with negligence in causing, suffering and permitting the electric current and the machinery on the hotbed to be and remain on, and negligently causing, suffering and permitting the main switch of said machinery to be connected or engaged, all in violation of the duly promulgated rule and custom of the defendant's mill.

The answer of the respondent, Laclede Steel Company, pleaded that the plaintiff and defendant were operating under the provisions of the Workmen's Compensation Act of Illinois at the time of the plaintiff's injury, and that his only remedy was provided by that act, and that the common-law remedy had been abolished.

In reply to this answer plaintiff pleaded in detail that he had filed a claim with the Industrial Commission of Illinois; that the matter was heard by an Arbitrator appointed by that Commission who found in favor of the employee and against the employer; that then the employer appealed to the full Commission which after reviewing the record affirmed the award in favor of the employee; that the employer then caused a writ of certiorari to be issued out of the Circuit Court of Madison County, Illinois, to the In-

dustrial Commission and John Mangiaracino, to review the proceedings held before the Industrial Commission; that this matter was then submitted to the Circuit Court of Madison County, Illinois, the situs of the accident, and the domicile of the plaintiff; that the Circuit Court of Madison County held that under the facts and laws applied to those facts the injury did not arise out of and in the course of the employment within the meaning of those words as they are used in the Illinois Compensation Act, and the injury was not therefore compensable under that act. The plaintiff also pleaded the statutory and case law of Illinois with respect to the jurisdiction and power of the Circuit Court of Madison County in this proceeding, and also set forth the decisions of the Supreme Court of Illinois to show that this accident did not arise out of and in the course of the employment within the meaning of those terms as used in the Illinois Compensation Act. Plaintiff further pleaded that the decision of the Circuit Court of Madison County, Illinois, was a final adjudication on the merits by a court of record having jurisdiction over both the subject matter and the parties to the accident, and that such ruling must therefore be given full faith and credit by the courts of Missouri under Section 1, Article IV of the Constitution of the United States and laws of the United States, and also under the Constitution and laws of the State of Missouri.

The defendant then moved to strike out all of the allegations in the reply which related to the proceedings instituted under the provisions of the Illinois Compensation Act. This motion was overruled by the trial court.

The trial was had before the Court and a jury, and it resulted in a verdict and judgment in favor of this petitioner in the sum of four thousand five hundred ($4,500.00) dollars. An appeal was duly perfected to the St. Louis

Court of Appeals in which Court your petitioner filed a motion to remove the appeal to the Supreme Court of the State of Missouri on the ground that a constitutional question was involved; that is, that the interpretation of Article IV, Section 1 of the Constitution of the United States was involved in the decision on the merits of this case. The St. Louis Court of Appeals then transferred this case to the Supreme Court of the State of Missouri, where the judgment was on October 31, 1940, reversed.

Your petitioner, in due time, filed in said Supreme Court of Missouri his motion for a rehearing which was received by said Court and on the 11th day of December, 1940, the said Supreme Court of the State of Missouri denied said motion for a rehearing. Said Supreme Court of Missouri having denied petitioner's motion for a rehearing on said date, the judgment of said Court became final. (See Mangiaracino v. Laclede Steel Company [Mo. Sup. Ct.], 145 S. W. [2] 388, Secs. 1063 and 1065, R. S. Mo. 1929.)

Donnell v. Wright, 199 Mo. 304, 97 S. W. 928;
Ginnochio v. Ill. Cent. Ry. Co., 264 Mo. 516, 175 S. W. 196;
Abbott v. Kansas City Elevated Ry. Co., 232 Mo. 616, 135 S. W. 1199;
Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406;
Strottman v. St. Louis I. M. & S. Ry. Co., 228 Mo. 154, 128 S. W. 187, 30 L. R. A. (N. S.) 377;
Walsh Const. Co. v. United States Guaranty Company (C. C. A. 8), 76 Fed. (2) 240;
Sabol v. St. Louis Cooperage Co. (Mo. Sup.), 31 S. W. (2) 1041.

SUMMARY AND SHORT STATEMENT.

This accident occurred on May 1, 1936. The plaintiff (your petitioner) had been employed by the Laclede Steel Company for about fourteen months prior to the date of

the accident, and for about three or four months immediately preceding May 1, 1936, he was what was known as a billet boy. The Laclede Steel Company remelted large steel rails and cast out of them billets, which were described as round bars of varied diameters, and about seventy to eighty feet in length. The billet boys receive this extremely hot billet in the mill after it is cast, bend it, and then feed it into rollers, which take the steel billets to the finishers, whence it is passed down another series of rollers to the hotbed, and from there it goes to the shearers, who cut the billets to fit the particular orders then on hand. Due to the intense heat of the billet when handled by the billet boys, and also due to the fact that it is necessary to expend a great amount of energy to perform this work satisfactorily, the billet boys, including your petitioner, worked on the job for a half hour, then had the succeeding half hour off, and had this opportunity to get away from this excessive heat. On May 1, 1936, the date of this accident, your petitioner worked from the half hour to the hour on his shift, and the accident occurred between 9 and 9:30 p. m. during his half hour off. During the time of this half hour off the employees could go anywhere in the plant where they so desired. The petitioner went down to hotbed No. 1, which a friend of his, Pete Ferro, had just started working that day. He went there to show Pete how to pull the bed and do the work better with less strain on himself, and also how to avoid some of the heat from this steel. He remained there about five minutes and then went over to hotbed No. 2, where he met Cliff Shambro, also a friend of his. On that date hotbed 2 had been shut down at 3 p. m. and was not being used at all during the petitioner's shift. There was no hot steel on it, and the rolls, gears and mechanism were and had been, for at least six hours, motionless. Ferro was with him at that time;

there were several other employees around hotbed No. 2 resting and cooling off during their rest periods. Shambro at the time was sitting on the seat next to the mechanism which controlled the rollers and the flappers in the hotbed, and plaintiff sat on the turtle or metal covering housing the gears and mechanism, and then straddled an eye on top of this turtle. Petitioner placed his feet on the bar below the turtle, and he was there about five minutes and had his foot on the bar. He started to get up when the machinery started in motion, and his left foot went into the bar, injuring him. He hollered, and Shambro then came over and picked him up and took him out. Petitioner further stated that he had formerly worked on the hotbed, among his other employment for the Laclede Steel Company, and that he was familiar with the rules and regulations regarding their operation. One of these rules was that the last man on the shift was to disconnect the current from the hotbed at the main switch, if this particular hotbed was not to be used in the next succeeding shift. If this main switch were disconnected it would be impossible for any of the gears or mechanism on this hotbed to operate, regardless of what anybody did to them.

Sam Shambro testified that he had worked for the Laclede Steel Company starting the day after the plaintiff did; that he worked on the hotbeds, and also worked as a billet boy, but he was not present on the date that John Mangiaracino was injured; that he was familiar with the custom and practice with respect to the operation of the hotbed; that it was a rule of the company that when the hotbed was not being operated the current should be turned off. They had direct orders to turn off this power when the hotbed was not in operation; that prior to the date of the accident while working as a billet boy there were also present both billet boys and men on the hotbed. They would sit around or lay around on the hotbeds that were

not in operation, during their rest periods (Record 67, 68 and 69). There were no rules requiring the men to be in any particular portion of the plant during their time off (Record 71 and 72). He was never forbidden to sit on a hotbed that was not in operation (Record 72).

The plaintiff then introduced into evidence Exhibit G, which was a certified copy of the judgment of the Circuit Court of Madison County, Illinois, in the compensation proceeding. This was certified in accordance with the Act of Congress relating to judgments (Record 72, 73, 74 and 75).

The parties then stipulated that the statutes, opinions and citations referred to in the defendant's answer, and the plaintiff's reply thereto, were offered in evidence (Record 83). The defendant also admitted the allegations contained in the reply with respect to the proceedings before the Industrial Commission of the State of Illinois, and also the Circuit Court of Madison County, Illinois, and that these proceedings were accurate. It was also stipulated that the parties were operating under the provisions of the Illinois Compensation Act on the date of the accident (Record 83 and 84).

In its opinion the Supreme Court of Missouri assigned as its reasons for reversing the judgment that the evidence adduced in the case showed that your petitioner had a cause of action under the Illinois Workmen's Compensation Act, and that his common-law right of action was extinguished by the enactment of the Illinois Workmen's Compensation Act, but the Supreme Court of the State of Missouri refused to hold that the judgment of the Circuit Court of Madison County, Illinois, in the compensation proceedings introduced by your petitioner was binding and conclusive upon all parties concerned.

SPECIFICATIONS OF ERROR.

The judgment secured by the petitioner in the trial court was reversed by the Supreme Court of Missouri under an erroneous interpretation of Article IV, Section 1, of the Constitution of the United States, as applied to the facts in this case in the following particulars:

1. Error in failing and refusing to hold that the applicability of the Illinois Compensation Act was not open to question by the trial court, since there was a final judicial determination of this question by a court of competent jurisdiction.

2. Error in holding that petitioner failed to make a case showing respondent's liability under common-law negligence.

3. Error in holding that the trial court erred in not directing a verdict in favor of the respondent.

OPINION OF THE COURT BELOW.

There was no opinion of the trial court in the case here sought to be reviewed.

The opinion of the Supreme Court of the State of Missouri appears in the printed record herewith filed. It is reported in 145 S. W. (2), page 388 (Adv. Sheet No. 2, Jan. 14, 1941). This case is not yet reported in the official Missouri reports.

JURISDICTION OF THIS COURT.

Jurisdiction of this Court is based upon the Judicial Code, Section 237, as amended by the Act of February 13, 1925, 43 Stat. 937, U. S. Code, Title 28, Sec. 344, Par. (B), permitting petitions for certiorari to be prayed for and issued to the highest courts of the various states where

any title, right, privilege or immunity is especially set up or claimed by either party under the Constitution of the United States.

The decision here sought to be reviewed, having construed the rights and privileges of the petitioner under Article IV, Section 1, of the Constitution of the United States, and the decisions of this Court thereunder, the jurisdiction of this Court attaches because the Supreme Court of Missouri, in reversing the judgment of the trial court, has decided a federal question of substance in a way not in accord with the applicable and controlling decisions of this Court. Some authorities sustaining the jurisdiction are:

Fauntleroy v. Lum, 210 U. S. 230;
American Express Co. v. Mullins, 212 U. S. 311.

II.

The Supreme Court of Missouri is the highest court of that state.

The original date of the judgment of the Supreme Court of Missouri here sought to be reviewed is October 31, 1940.

A petition and motion for rehearing was filed on November 8, 1940, within the time provided by the rules of the Supreme Court of Missouri, and said motion for rehearing was overruled on the 11th day of December, 1940.

The judgment of the Supreme Court of Missouri reversing outright the judgment of the Circuit Court of the City of St. Louis is a final judgment in Missouri.

Sections 1063 and 1065, R. S. Mo. 1929;
Donnell v. Wright, 199 Mo. 304, 97 S. W. 928;
Ginnochio v. Illinois Central R. R. Co., 264 Mo. 561, 75 S. W. 196;
Abbott v. Kansas City Elevated Railway Co., 232 Mo. 616, 135 S. W. 799;

Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406;
Strottman v. St. Louis, Iron Mountain & Southern Ry. Co., 228 Mo. 154, 128 S. W. 187, 30 L. R. A. (N. S.) 377;
Walsh Const. Co. v. United States Guaranty Co. (C. C. A. 8), 76 Fed. (2) 240;
Sabol v. St. Louis Cooperage Co., Missouri Sup., 31 S. W. (2) 1041.

III.

Only one question is raised in this court on this record. That question is whether a Missouri court may declare a person under the provisions of the Illinois Workmen's Compensation Act after an Illinois court of competent jurisdiction, both as to the person and the subject matter, has rendered its final decision that the Illinois Workmen's Compensation Act does not, under the circumstances, apply to the same parties on the same set of facts.

SUMMARY OF REASONS FOR THE ALLOWANCE OF THE WRIT.

I.

In this case the Supreme Court of the State of Missouri has determined a federal question of substance in a way not in accord with the decisions of this Court, and in a way not in accord with the applicable and controlling principles of those decisions rendered by this Court.

II.

The Supreme Court of Missouri has erroneously ruled that the courts of Missouri may inquire into the correctness of a decision of an Illinois court of competent juris-

diction, both as to the person and the subject matter, after the Illinois Court has rendered a final decision between the same parties, and on the same set of facts; the Supreme Court of Missouri has erroneously ruled that the courts of Missouri are authorized to declare a workman to be operating under and subject to the provisions of the Illinois Workmen's Compensation Act, after an Illinois court of competent jurisdiction has rendered a final judgment that, under the facts and circumstances, the Illinois Compensation Act did not apply to the parties and the remedies and procedure provided by that act were not applicable nor available to them.

III.

The opinions and decisions of this Court, as well as those of other state courts and other federal courts, hold a judgment is conclusive as to all of the media concludendi, and that that judgment cannot be impeached either in or out of the state by showing that it was based upon a mistake of law, or a mistake of fact.

PRAYER.

For the purpose of correcting the errors complained of, and to the end that the rights of your petitioner may be determined in accordance with the federal law, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court and directed to the Supreme Court of the State of Missouri, commanding it to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record and proceedings of the said Supreme Court of Missouri, in the within described cause of John Mangiaracino, Respondent, v. Laclede Steel Company, a Corp., Appellant, No. 37,172, to the end that the judgment of the said Supreme Court

of Missouri in said cause may be reviewed by this Court as provided by law, and that your petitioner may have such other relief as to this Court may seem appropriate, and that the judgment of the said Supreme Court of Missouri may be reversed by this Honorable Court.

Respectfully submitted,

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SUPPORTING BRIEF.

I.

The applicability of the Illinois Compensation Act was not open to question, since there was a final judicial determination of this question by a court of competent jurisdiction.

Const. of the U. S., Art. IV, Sec. 1;
Fauntleroy v. Lum, 210 U. S. 230;
Am. Exp. Co. v. Mullins, 211 U. S. 311;
Restatement, Conflict of Laws, Chap. 10, Sec. 431.

II.

The judgment of the Supreme Court of Missouri entered on the 11th day of December, 1940, reversing outright the judgment of the Circuit Court of the City of St. Louis, Missouri, is a final judgment of Missouri.

Secs. 1063 and 1065, Revised Statutes Mo. 1929;
Donnell v. Wright, 199 Mo. 304, 97 S. W. 928;
Ginnochio v. Illinois Central R. R. Co., 264 Mo. 516, 175 S. W. 196;
Abbott v. Kansas City Elevated Ry. Co., 232 Mo. 660, 135 S. W. 1199;
Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406;
Strottman v. St. Louis-Iron Mountain & Southern R. Co., 228 Mo. 154, 128 S. W. 187, 30 L. R. A. (N. S.) 377;
Walsh Const. Co. v. United States Guaranty Co. (C. C. A. 8), 76 Fed. (2) 240;
Sabol v. St. Louis Cooperage Co. (Mo. Sup.), 31 S. W. (2) 1041.

ARGUMENT.

The first question presented is that the Missouri Supreme Court erred in holding that the courts of Missouri may inquire into the facts of the case, and may declare that your petitioner was operating under, and his remedy controlled by, the Illinois Compensation Act after an Illinois court of competent jurisdiction has rendered a final decision that under the particular facts the Illinois Compensation Act did not apply to your petitioner, and the remedy provided thereunder was not given to him.

Your petitioner in his reply to the defendant's answer filed in the Circuit Court of the City of St. Louis wherein the defense of the applicability of the Illinois Compensation Act was raised, pleaded that he had filed a claim which was heard by an arbitrator and appealed by the employer, and affirmed by the full Commission, and then further appealed to the Circuit Court of Madison County, Illinois, the situs of the accident and the domicile of plaintiff; that the Circuit Court of Madison County, Illinois, reviewing the evidence adduced by the parties, held that under the law and the evidence your petitioner was not entitled to compensation under the Illinois Workmen's Compensation Act, inasmuch as his injuries did not arise out of and in the course of his employment within the meaning of those words as used in the Illinois Compensation Act. A duly authenticated and certified copy of this judgment was introduced in evidence by the plaintiff, your petitioner, who also showed that the Circuit Court of Madison County, Illinois, had the power and right to enter such a judgment between the parties, and also had the right to apply the Illinois law to the facts, and had complete jurisdiction of the appeal from the Illinois Workmen's Compensation Act. By stipulation, which appears opposite abstract pages 83 and 84, the defendant admitted that the

proceedings were held with reference to the application for compensation as set forth in the plaintiff's reply, and also admitted that the proceedings of the Circuit Court of Madison County were accurate.

This, then, leads us to the following proposition: Can a Missouri court go behind the Illinois judgment, which has been duly pleaded and proved, and inquire into the merits of the original cause of action to determine if the Illinois Court ruled correctly? We think that the Missouri Court has no such power, but must, on the other hand, recognize and support the Illinois decree, which conclusively determines that your petitioner had no right to recover under the provisions of the Illinois Workmen's Compensation Act.

Article IV, Section 1, of the United States Constitution, provides as follows:

> "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may, by general law, prescribe the manner in which said acts, records and proceedings shall be proved to the effect thereof."

This question of the applicability of the Illinois Compensation Act has been decided by a court of competent jurisdiction, and under the above provisions of the United States Constitution the courts of Missouri are required to give such judgment of the Illinois Court full faith and credit; that is, they must give them the credit which they would have in the State of Illinois.

The opinion of this Court in the case of Fauntleroy v. Lum, 210 U. S. 230, is in accord with the rule above stated. In that case there was an appeal from the Supreme Court of the State of Mississippi. The plaintiff in the action below had sued on a Missouri judgment against the defendant arising out of a grain futures transaction. The

plaintiff had prevailed in his Missouri action, and then brought suit on the judgment in the state courts of Mississippi.

The defense was that the cause of action was barred in the State of Mississippi, where the transaction had taken place, and therefore the judgment of the Court of Missouri was not valid in finding against the defendant. The plaintiff, in answer to this, stated that under the full faith and credit clause of the United States Constitution, whether this judgment was based upon a mistake of law or fact, made no difference, since he had a final judgment of a court of competent jurisdiction. This Honorable Court decided that, even though the judgment could not have been obtained in Mississippi, the judgment of the Court of Missouri was entitled to the full faith and credit protection guaranteed by the Federal Constitution, and declared (210 U. S., l. c. 237):

> "A judgment is conclusive as to all the media concludendi, U. S. v. California & Oregon Land Co., 192 U. S. 355; and it needs no authority to show that it cannot be impeached either in or out of the state by showing that it was based upon a mistake of law. Of course, want of jurisdiction over either the person or the subject matter might be shown. Andrews v. Andrews, 184 U. S. 14; Clark v. Clark, 178 U. S. 186. But as the jurisdiction of the Missouri Court is not open to dispute, the judgment cannot be impeached in Mississippi even if it went on a misapprehension of the Mississippi law. See Goddard v. Gray, L. R. 6 Q. B. 139; McDonald v. Grand Trunk Ry. Co., 71 N. H. 448; Peet v. Hatcher, 112 Ala. 514."

To like effect see also American Express Company v. Mullins, 212 U. S. 311.

Missouri has been in conformity to the rule set forth in the above cases, particularly the Fauntleroy case, and

this is illustrated by the case of Howey v. Howey (Mo. Sup.), 240 S. W. 450. In that case the plaintiff sued for a divorce and alleged sufficient to make a prima facie case. The defendant, answering, set up a prior divorce in the State of Florida, and plaintiff's petition was dismissed. In that opinion the Supreme Court of Missouri holds that a judgment of another state may be questioned only for (1) jurisdiction over the subject matter, (2) failure to give legal notice to the defendant and (3) where there has been some fraud in the concoction of the judgment, as where it is made to appear that the defendant appeared when in fact there was no authorized appearance.

In the Restatement on the Conflict of Laws, Chapter 10, Sec. 431, the general rule is thus stated:

> "A valid foreign judgment will not be denied recognition because of error of law or fact in the proceedings before judgment."

In U. S. ex rel. Bank v. Lufcy, 329 Mo. 1224, 49 S. W. (2) 8, in speaking of the effect of a judgment of another court on the same matter then before the Court, the Supreme Court of the State of Missouri uses the following language:

> "It is the familiar principle of the doctrine of res adjudicata that even though a judgment may be erroneous (not void) so that it may have been reversed on appeal, it is nevertheless effective as a bar to further suit. 34 C. J. 768, Sec. 1184; 15 R. C. L. 967, Sec. 4333. It is also well settled that a former judgment is a bar not only to all matters which were raised, but also as to all defenses which could have been raised. 34 C. J. 56, Sec. 1267; 15 R. C. L. 962, Sec. 430."

Other decisions of the courts of Missouri to the same effect are also Holland v. Ry., 36 S. W. 29; Payne v. O'Shea, 84 Mo. 129, 135; Hudson-Kimberley Publishing

Co. v. Young, 90 Mo. Ap. 505; Hamil v. Talbot, 72 Mo. Ap. 22.

In view of the pronouncement of this Honorable Court, and also of the Missouri Supreme Court, we think it is conclusive that the Supreme Court of Missouri erred when it held that the courts of Missouri had the right to go beyond the final judgment of the court of the State of Illinois between the same parties, on the same set of facts presented in both records. This holding is contrary to the Constitution of the United States and the decisions of this Court construing Article IV, Sec. 1, of said Constitution. This question was raised as soon as your petitioner had the right to do so, namely, in his Reply filed in the Circuit Court of the City of St. Louis, Missouri. This point was preserved throughout the entire proceeding, and was called to the attention of the Missouri Supreme Court in your petitioner's Brief and also in his Motion for Rehearing filed with that court.

II.

The decision of the Missouri Supreme Court is a final judgment entered on the 11th day of December, 1940, when the motion for rehearing was overruled.

Section 1063 of the Revised Statutes of Missouri 1929, so far as it is applicable to the facts before this Court, reads as follows:

> "The Supreme Court, St. Louis Court of Appeals, Kansas City Court of Appeals, in appeals and writs of error, shall examine the record and award a new trial, reverse or affirm the judgment or decision of the Circuit Court, or give such judgment as such court ought to have given as to them shall seem agreeable to law; * * *."

Section 1065 of the Revised Statutes of Missouri 1929 provides as follows:

> "The Supreme Court, upon the determination of any cause in appeal or error, may award execution to carry the same into effect, or may remit the record, with their decision thereon, to the Court from whence the cause came, and such determination shall be carried into execution by such court."

The opinion of the Supreme Court of Missouri distinctly shows that the merits of the cause were passed upon by the Supreme Court of Missouri, that Court holding that under the facts involved the defendant was under neither statutory nor common-law liability to the plaintiff.

In the light of the foregoing it becomes manifest that the judgment of the Supreme Court of Missouri is final, in that it reverses the judgment and decision of the Missouri Circuit (trial) Court, gave such judgment as seemed to the Supreme Court of Missouri to be agreeable to law, awarded restitution to the appellant and awarded execution to carry the judgment of that court into effect.

At the same time, said judgment of the Supreme Court of Missouri did not remit or remand the case to the trial court for further proceedings to carry the judgment of the Supreme Court of Missouri into execution, such remission or remand being optional under Section 1065 of the Revised Statutes of Missouri 1929, and **the trial court was thereby deprived of all jurisdiction to further proceed in this cause.** Donnell v. Wright, 199 Mo. 304, 97 S. W. 928; Ginnochio v. Ill. Cent. Ry. Co., 264 Mo. 516, 175 S. W. 196; Abbott v. Kansas City Elevated R. Co., 232 Mo. 616, 135 S. W. 1199; Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406.

In Strottman v. St. Louis-Iron Mountain & Southern Ry. Co., 228 Mo. 154, 186, 128 S. W. 187, 30 L. R. A. (N. S.) 377, the Missouri Supreme Court en banc distinctly said:

> "By statute we are authorized to enter judgment of

simple reversals, and these judgments may or may not be finalities. **If the merits of the cases are adjudicated and passed upon, they are final.** * * * So that, considering the whole statute, we are of the opinion that a reasonable construction thereof precludes the plaintiff from again suing after a judgment of reversal in a case wherein the merits of the controversy have been investigated, and adjudicated by the Court, and this fact is one of easy determination."

In the more recent case of Sabol v. St. Louis Cooperage Co. (Mo. Sup.), 31 S. W. (2) 1041, in discussing a previous decision of that same case in 313 Mo. 527, 282 S. W. 425, the Missouri Supreme Court distinctly said (31 S. W. [2], l. c. 1044):

"* * * All of the evidence offered in the first case was fully considered by Division 1, and it held that such evidence was not sufficient to fasten upon defendant liability for plaintiff's injury. It therefore reversed the judgment outright.

"How the judgment of a court could more conclusively decide a case upon its merits, we are unable to comprehend. Had Division 1 felt that plaintiff could have produced evidence to prove negligence on defendant's part, it could and doubtless would have remanded the cause for a new trial instead of reversing the judgment outright. Sykes v. Ry. Co., 178 Mo. 693, l. c. 715, 77 S. W. 723; Rutledge v. Ry. Co., 123 Mo. 121, l. c. 140, 24 S. W. 1053, 27 S. W. 327; Strottman v. Ry. Co., 228 Mo. 154, l. c. 187, 128 S. W. 187, 30 L. R. A. (N. S.) 377; Finnegan v. Railroad Co., 244 Mo. 608, l. c. 663, 149 S. W. 620.

"Division 1 had full power to terminate the litigation. **This order of outright reversal resulted in such termination. That judgment is conclusive and binding, not only upon the trial court, but upon the Supreme Court in division and en banc.**"

Likewise in Walsh Const. Co. v. United States Guaranty Co. (C. C. A. 8), 76 Fed. (2) 240-242, it is distinctly said:

> "It will be found quite uniformly to be the rule that when an appellate court, finding under the law that no recovery can be had, uses the word 'reversed' without more this means that the case is at end."

If the judgment of the Supreme Court of Missouri reversing the case outright resulted in a termination of litigation, and means that this case is at an end, such judgment of the Supreme Court of Missouri sought to be reviewed by this petition for certiorari is a final judgment, and one subject to review by this Honorable Court by a writ of certiorari.

CONCLUSION.

From the foregoing we submit that it appears clearly from the facts in this case that the Supreme Court of the State of Missouri erred in refusing to give full faith and credit to the judgment of Circuit Court of Madison County, Illinois, in the appeal from the award of the Illinois Workmen's Compensation Commission. We therefore respectfully submit that this Honorable Court should issue a writ of certiorari in order that such error may be corrected, and in order that the opinion and judgment of the Supreme Court of the State of Missouri may be reversed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

JOHN MANGIARACINO,
Petitioner,

vs.

LACLEDE STEEL COMPANY, a Corporation,
Respondent.

No. 835.

RESPONDENT'S BRIEF

Opposing Petition for Writ of Certiorari to the Supreme Court of Missouri.

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INDEX.

Page

Reference to opinion of the Supreme Court of Missouri 1

Jurisdiction 1

Statement of the case 3

Summary of argument 4

Argument 6

I. There is no denial of full faith and credit where the issues presented and the rights and remedies involved in the two cases are entirely different and neither court could have decided the issue which was decided by the other..... 6

II. The Circuit Court of Madison County, Illinois, decided only the issue of whether or not the petitioner was entitled to compensation under the Illinois Workmen's Compensation Act..... 9

III. The Supreme Court of Missouri decided only the issue of whether or not the petitioner was entitled to recover damages in the common-law action 9

IV. The decision in the common-law action would have been the same if both proceedings had been in the same state..... 13

Conclusion 13

Cases Cited.

American Express Co. v. Mullins, 212 U. S. 311..... 8

Ash Sheep Co. v. United States, 252 U. S. 159..... 2, 7

Bishop v. Chicago Rys. Co., 290 Ill. 194, 124 N. E. 837 .....5, 12

Blaine v. Huttig Sash & Door (Mo. App.), 105 S. W. (2d) 946 .....5, 13

Chicago Union Traction Co. v. Albert Giese, 229 Ill. 260, 82 N. E. 232 .....5, 10

Covington v. First National Bank, 198 U. S. 100.... 4, 8

Cramer v. Wilson, 195 U. S. 408 ..... 4, 8
Dailey v. River Raisin Paper Co., 269 Mich. 443, 257 N. W. 857 ..... 5, 13
Davidson v. St. Louis & San Francisco Ry. Co. (Mo. Sup.), 229 S. W. 786 ..... 5, 10
Faber v. Industrial Commission, 352 Ill. 115, 185 N. E. 255 ..... 5, 12
Fauntleroy v. Lum, 210 U. S. 230 8
Mt. Olive & Staunton Coal Co. v. Industrial Commission, 355 Ill. 222, 189 N. E. 296 ..... 5, 12
O'Brien v. Chicago City R. Co., 305 Ill. 244, 137 N. E. 214 ..... 5, 12
Repka v. Fedders Mfg. Co., 267 N. Y. S. (App. Div.) 709, aff. 264 N. Y. 538, 191 N. E. 553 ..... 5, 13
Schuam v. Southwestern Bell Telephone Co., 336 Mo. 228, 78 S. W. (2d) 439 ..... 5, 10
Stevens v. Illinois Central R. R., 306 Ill. 370, 137 N. E. 859 ..... 5, 12
Stryker v. Goodnow, 123 U. S. 527 ..... 4, 8
United States v. Southern Pacific Co., 259 U. S. 213 .. 4, 8
Wright v. Peabody Coal Co., 290 Ill. App. 110, 8 N. E. (2d) 68 ..... 5, 12

Textbooks Cited.

31 Am. Jur., p. 147 4
Restatement, Conflict of Laws, Chap. 10, Sec. 431 8

Statutes Cited.

Sec. 6, Illinois Workmen's Compensation Act, Sec. 143, Chap. 48, Smith-Hurd Ill. Ann. Stat. 5, 11
Sec. 11, Illinois Workmen's Compensation Act, Sec. 148, Chap. 48, Smith-Hurd Ill. Ann. Stat. 5, 11
Sec. 18, Ill. Workmen's Compensation Act, Sec. 155, Chap. 48, Smith-Hurd Ill. Ann. Stat. 2, 4, 9
Sec. 19 (f) (2), Illinois Workmen's Compensation Act, Sec. 156 (f) (2), Chap. 48, Smith-Hurd Ill. Ann. Stat. 2, 4, 9

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

JOHN MANGIARACINO,
Petitioner,
vs.
LACLEDE STEEL COMPANY, a Corporation,
Respondent.
No. 835.

RESPONDENT'S BRIEF

Opposing Petition for Writ of Certiorari to the Supreme Court of Missouri.

REFERENCE TO OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri has not been reported in the official reports. It has been reported in Volume 145, South Western Reporter (2nd), page 388.

JURISDICTION.

Petitioner claims that this Court has jurisdiction to review the decision of the Missouri Supreme Court because there is present a constitutional question involving the denial of full faith and credit to a judgment of a sister state. But it is respectfully submitted that there is no such question in this case. The Missouri Supreme Court expressly gave full faith and credit to the judgment of the Circuit Court of Madison County, Illinois (Rec. p. 124).

The issues in the two cases were entirely different. The issue determined by the Circuit Court of Madison County, Illinois, in the proceeding brought by the petitioner in the county where he received his injury and where he resided, was whether or not petitioner was entitled to compensation under the Illinois Workmen's Compensation Act (Rec. p. 73). The issue decided by the Missouri Supreme Court, in the suit brought by the petitioner in Missouri, was whether or not the petitioner was entitled to recover damages in a common-law action (Rec. p. 125). The Circuit Court of Madison County, Illinois, in the workmen's compensation proceeding, did not attempt to decide whether or not the petitioner had any common-law action for damages; nor could that issue possibly have been decided in that case. **Section 19 (f) (2) of the Illinois Workmen's Compensation Act, Section 156 (f) (2), Chap. 48, Smith-Hurd Ill. Ann. Stat.** The Missouri Supreme Court, in the common-law action, did not attempt to decide whether or not the petitioner was entitled to recover compensation under the Illinois Workmen's Compensation Act; nor could that issue possibly have been decided in that case. **Section 18, Illinois Workmen's Compensation Act, Section 155, Chap. 48, Smith-Hurd Ill. Ann. Stat.** The question decided in the Missouri case did not become res adjudicata in the Illinois case since it was not and could not have been made an issue in the Illinois case. The issue of denial of full faith and credit cannot arise with respect to a matter which is not res adjudicata. The issues in the two cases being entirely different, there could be no denial by the Supreme Court of Missouri of full faith and credit to the decision of the Circuit Court of Madison County, Illinois. **Ash Sheep Co. v. United States, 252 U. S. 159;** and there is no federal question present to bring this proceeding within the jurisdiction of this Court. Title 28, Section 344, U. S. C. A.

STATEMENT OF THE CASE.

The respondent deems it necessary to make the following statement supplementing the statement of the petitioner:

The respondent, in stipulating that the allegations, relating to the proceedings in the Illinois Workmen's Compensation case, contained in the reply filed by the petitioner in the Missouri case, were accurate, did so subject to respondent's objection that said proceedings were irrelevant to any issue involved in the Missouri case (Rec. pp. 83-84).

The peitioner, in his petition filed in the Missouri case, alleged that:

> "* * * he was in the employ of defendant in its aforesaid mill or plant in Granite City, Illinois, and that on or about said date plaintiff was in and upon the aforesaid premises" (Rec. p. 2).

The charge of negligence upon which the petitioner relied and upon which he was permitted to go to the jury was:

> "1. Defendant negligently and carelessly caused, suffered and permitted the electric current of said machinery in said hotbed No. 2 to be and remain on and negligently caused, suffered and permitted the main switch to said machinery to be connected or engaged, all in violation of the duly promulgated rule and custom of the defendant's said mill" (Rec. p. 3).

The instruction upon which the petitioner went to the jury required the jury to find that the petitioner was in the employ of the respondent, upon its premises, and submitted the aforesaid charge of negligence (Rec. pp. 103, 104).

The petitioner did not plead nor make any attempt to prove that the respondent breached any duty which it owed to him, or even that it had any duty to petitioner, independent of the relationship of master and servant (Rec. p. 122).

SUMMARY OF ARGUMENT.

There was no denial of full faith and credit here because the issue determined by the Circuit Court of Madison County, Illinois, was entirely different from that decided by the Supreme Court of Missouri and neither court could have decided the issue which was decided by the other.

I.

There is no denial of full faith and credit where the issues presented and the rights and remedies involved in the two cases are entirely different and neither court could have decided the issue which was decided by the other.

Ash Sheep Co. v. United States, 252 U. S. 159;
31 Am. Jur., p. 147;
Stryker v. Goodnow, 123 U. S. 527;
Covington v. First National Bank, 198 U. S. 100;
Cramer v. Wilson, 195 U. S. 408;
United States v. Southern Pacific Co., 259 U. S. 213.

II.

The Circuit Court of Madison County, Illinois, decided only the issue of whether or not the petitioner was entitled to compensation under the Illinois Workmen's Compensation Act.

Section 19 (f) (2), Illinois Workmen's Compensation Act, Section 156 (f) (2), Chap. 48, Smith-Hurd Ill. Ann. Stat.

III.

The Supreme Court of Missouri decided only the issue of whether or not the petitioner was entitled to recover damages in the common-law action.

Sec. 18, Ill. Workmen's Compensation Act, Sec. 155, Chap. 48, Smith-Hurd Ill. Ann. Stat.;

Chicago Union Traction Co. v. Albert Giese, 229 Ill. 260, 82 N. E. 232;
Davidson v. St. Louis & San Francisco Ry. Co. (Mo. Sup.), 229 S. W. 786;
Schuam v. Southwestern Bell Telephone Co., 336 Mo. 228, 78 S. W. (2d) 439;
Sec. 6, Illinois Workmen's Compensation Act, Sec. 143, Chap. 48, Smith-Hurd Ill. Ann. Stat.;
Sec. 11, Illinois Workmen's Compensation Act, Sec. 148, Chap. 48, Smith-Hurd Ill. Ann. Stat.;
O'Brien v. Chicago City R. Co., 305 Ill. 244, 137 N. E. 214;
Stevens v. Illinois Central R. R., 306 Ill. 370, 137 N. E. 859;
Faber v. Industrial Commission, 352 Ill. 115, 185 N. E. 255;
Mt. Olive & Staunton Coal Co. v. Industrial Commission, 355 Ill. 222, 189 N. E. 296;
Wright v. Peabody Coal Co., 290 Ill. App. 110, 8 N. E. (2d) 68;
Bishop v. Chicago Rys. Co., 290 Ill. 194, 124 N. E. 837.

IV.

The decision in the common-law action would have been the same if both proceedings had been in the same state.

Blaine v. Huttig Sash & Door (Mo. App.), 105 S. W. (2d) 946;
Dailey v. River Raisin Paper Co., 269 Mich. 443, 257 N. W. 857;
Repka v. Fedders Mfg. Co., 267 N. Y. S. (App. Div.) 709, aff. 264 N. Y. 538, 191 N. E. 553.

ARGUMENT.

I.

Petitioner seeks to invoke the jurisdiction of this Court upon the claim that the full faith and credit clause of the Constitution of the United States has been violated by the decision of the Missouri Supreme Court, which petitioner alleges failed to give full faith and credit to the decision of the Circuit Court of Madison County, Illinois. The petitioner states the question thus:

> "This, then, leads us to the following proposition: Can a Missouri court go behind the Illinois judgment, which has been duly pleaded and proved, and inquire into the merits of the original cause of action to determine if the Illinois court ruled correctly? (and petitioner answers) We think that the Missouri court has no such power, but must, on the other hand, recognize and support the Illinois decree, which conclusively determines that your petitioner had no right to recover under the provisions of the Illinois Workmen's Compensation Act" (Petitioner's supporting brief, page 16).

We submit that no such question is presented by this record. The Missouri court made no attempt to go behind the Illinois judgment or to inquire into the merits of the original cause of action to determine if the Illinois court ruled correctly or for any other purpose. The Missouri court was not concerned with whether or not the petitioner had any right to recover under the Illinois Workmen's Compensation Act.

That the parties were subject to the Illinois Workmen's Compensation Act was admitted (Rec. p. 84); the petitioner filed his claim under that act and in that proceeding the Circuit Court of Madison County, Illinois, held that he was not entitled to recover. It did not, and it could not, hold

that the petitioner was entitled to recover damages in a common-law action.

Thereupon the petitioner came into the State of Missouri and filed an action for damages at common law. In that action, the Supreme Court of Missouri, by the decision which the petitioner asks this Court to review, held that the petitioner was not entitled to recover damages at common law. It did not, and it could not, hold that the petitioner was entitled to recover compensation under the Illinois Workmen's Compensation Act.

Since the Circuit Court of Madison County, Illinois, did not attempt to determine whether or not the petitioner could recover at common law, and it could not have done so, and since the Supreme Court of Missouri did not attempt to determine whether or not the petitioner could recover compensation under the Illinois Workmen's Compensation Act, and it could not have done so, there could not possibly be any denial of full faith and credit involved in these proceedings.

In the case of **Ash Sheep Company v. United States, 252 U. S. 159**, this Court said:

> "We agree with the Court of Appeals that 'a judgment is not conclusive of any question which, from the nature of the case or the form of action, could not have been adjudicated in the case in which it was rendered.'"

The rule is stated briefly in **31 American Jurisprudence, page 147**:

> "Obviously, if the judgment is not effective as res judicata in the state in which the judgment was rendered, it need not be given effect as res judicata in other states. Accordingly, full faith and credit is not denied a judgment of a sister state by a refusal to treat the judgment as res judicata in regard to a dif-

ferent cause of action, or in regard to an issue not involved and determined in the previous action involving a different cause of action."

This is supported by the following decisions of this Court:

Stryker v. Goodnow, 123 U. S. 527;
Covington v. First National Bank, 198 U. S. 100;
Cramer v. Wilson, 195 U. S. 408;
United States v. Southern Pacific Co., 259 U. S. 213.

Petitioner, in his supporting brief, asserts that his claim, that the full faith and credit provision of the Constitution has been infringed by the Missouri decision, is supported by the following authorities, with the principles of which the Missouri decision is alleged to be in conflict:

American Express Co. v. Mullins, 212 U. S. 311;
Fauntleroy v. Lum, 210 U. S. 230;
Restatement, Conflict of Laws, Chap. 10, Sec. 431.

Petitioner does not discuss the first case cited above and we see no reason why it is relevant.

The case of Fauntleroy v. Lum, supra, is a typical full faith and credit case in which a judgment was obtained in Missouri and sued on in Mississippi. The validity of the judgment was attacked on the ground that it had resulted from an error of law. It was, of course, held that the judgment of the Missouri court was enforceable in Mississippi and that it could not be impeached even if based on an error of law.

The citation from the Restatement is to the same effect.

It is impossible to understand how these authorities tend in any way to support petitioner's contention that there is any issue of full faith and credit involved here, or that there is any conflict between the principle of Fauntleroy v. Lum, supra, and the decision of the Missouri court, which he asks this Court to review.

II.

Petitioner resides in Madison County, Illinois (Rec. p. 34), and received the injury of which he complained in that county and state. He filed his complaint with the Industrial Commission of Illinois, which had exclusive jurisdiction of proceedings for the recovery of compensation under the Illinois Workmen's Compensation Act. **Section 18, Illinois Workmen's Compensation Act, Section 155, Chap. 48, Smith-Hurd, Ill. Ann. Stat.** The proceeding reached the Circuit Court of Madison County, Illinois, the jurisdiction of which was limited by **Section 19 (f) (2), Illinois Workmen's Compensation Act, Section 156 (f) (2), Chap. 48, Smith-Hurd, Ill. Ann. Stat.**, as follows:

> "The Court may confirm or set aside the decision of the Industrial Commission. If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the Court may enter such decision as is justified by law, or may remand the cause to the Industrial Commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper."

Plainly, therefore, the issue of whether or not the petitioner had a cause of action at common law was not and could not be decided by the Circuit Court of Madison County, Illinois.

III.

Petitioner thereupon came into Missouri and filed suit to recover damages in a common-law action. Since the Industrial Commission of Illinois had exclusive jurisdiction of proceedings under the Illinois Workmen's Compensation Act **(Section 18, Illinois Workmen's Compensation Act, Section 155, Chap. 48, Smith-Hurd, Ill. Ann. Stat.)**, the issue of whether or not petitioner was entitled to compensation under that act could not in any event have been de-

cided by the Missouri courts. The issue in the Missouri case was whether or not the petitioner was entitled to damages in the common-law action. Since the alleged cause of action arose in Illinois the Illinois law applied to the extent that it was pleaded and proved in the Missouri case. The petitioner did not plead or prove the common law of Illinois, but in both Illinois and Missouri negligence arises only from a breach of duty.

Chicago Union Traction Co. v. Albert Giese, 229 Ill. 260, 82 N. E. 232;
Davidson v. St. Louis & San Francisco Ry. Co. (Mo. Sup.), 229 S. W. 786;
Schaum v. Southwestern Bell Telephone Co., 336 Mo. 228, 78 S. W. (2d) 439.

It follows that the burden was upon the petitioner to plead and prove a breach of duty on the part of respondent which would afford a basis for a common-law action. This burden the petitioner failed to carry. He alleged that he was in the employ of the respondent upon its mill premises (Rec. p. 2), and that the respondent negligently violated a rule of its mill by permitting the main switch to certain machinery to be connected (Rec. p. 3). The only issue submitted to the jury was based upon those allegations (Rec. pp. 103, 104). Therefore it was necessary for the Missouri Supreme Court, in reviewing the judgment of the trial court, to determine whether or not the alleged violation of the said rule was an act of negligence which would afford the petitioner a cause of action. To decide that question it was necessary, first, to decide whether or not the respondent owed the petitioner any duty with respect to the said machinery and, if so, the nature of that duty. This the Supreme Court of Missouri did in the following language from its opinion:

> "It is argued that this made a case for the jury, because 'plaintiff was an invitee of the defendant, and, as such, defendant owed him the duty of exercising

ordinary care for his safety while he was within the limits of the invitation.' Plaintiff cites no cases under this point, but it is clear from his argument that the only basis for plaintiff's invitation was his employment. (Plaintiff's argument says: 'Here we have a man who, during his working hours, was at a place he had every right to be.') Certainly he was not invited upon the premises, or any part thereof, for any other reason than to work there for defendant, or between tasks, to await his next task there. Obviously, that is the only basis of invitation the evidence warrants. Likewise, the only duty of defendant on such occasion, which could be the basis of a negligence case, is the duty an employer owes to his employee'' (Rec. p. 122).

The conclusion of the Court was the only one possible on the record before it, because the petitioner did not sue as a member of the general public and did not plead or prove any facts which would give rise to a duty owing by the respondent to the petitioner and not growing out of the relationship of master and servant.

The Missouri Supreme Court held, therefore, as it was bound to hold, that the petitioner had neither pleaded nor proved any cause of action which was independent of the relationship of master and servant. The question, then, was whether or not the alleged breach of duty, dependent as it was upon the relationship of master and servant, constituted a common-law cause of action for damages in the State of Illinois. Under the Illinois Workmen's Compensation Act, common-law actions to recover damages for injuries sustained by an employee in the course of his employment are abolished.

Section 6, Illinois Workmen's Compensation Act, Section 143, Chap. 48, Smith-Hurd, Ill. Ann. Stat.;

Section 11, Illinois Workmen's Compensation Act, Section 148, Chap. 48, Smith-Hurd, Ill. Ann. Stat.;

O'Brien v. Chicago City R. Co., 305 Ill. 244, 137 N. E. 214;
Bishop v. Chicago Rys. Co., 290 Ill. 194, 124 N. E. 837;
Stevens v. Illinois Central R. R., 306 Ill. 370, 137 N. E. 859;
Faber v. Industrial Commission, 352 Ill. 115, 185 N. E. 255;
Mt. Olive & Staunton Coal Co. v. Industrial Commission, 355 Ill. 222, 189 N. E. 296;
Wright v. Peabody Coal Co., 290 Ill. App. 110, 8 N. E. (2) 68.

The Supreme Court of Missouri had no jurisdiction over, and no concern with, the question of whether or not petitioner was entitled to receive compensation under the Illinois Workmen's Compensation Act, but it did have jurisdiction over, and it was concerned with, the question of whether or not the petitioner had a common-law action, which had not been abolished by the Illinois Workmen's Compensation Act; in other words, whether or not the petitioner had pleaded and proved a breach of a duty owing by the respondent to the petitioner as a member of the general public, or otherwise, not dependent upon the relationship of master and servant. The Missouri Supreme Court answered this question by holding that petitioner could not prove a common-law action with evidence which tended to show only a possible right to compensation under the Illinois Workmen's Compensation Act. Whether or not the petitioner had any rights under the Illinois Workmen's Compensation Act was not before the Court, but whether or not the petitioner had any cause of action at common law and independent of the relationship of master and servant was before the Court, and the Court held, as it was bound to hold, that the pleading and proof wholly failed to show any such common-law cause of action.

IV.

Why the petitioner chose to come to Missouri to bring the common-law action is not apparent from the record, but the question to be determined was not thereby changed. If he had filed his common-law action in Illinois, where he resided and where he received the injury, it would have been necessary still for him to plead and prove some duty on the part of respondent which did not arise out of the relationship of master and servant, and this he was unable to do. It would be absurd to contend that a common-law action sprang into existence by reason of the decision of the Circuit Court of Madison County, Illinois, and without proof of some common-law negligence which was not dependent upon the relationship of master and servant.

Blaine v. Huttig Sash & Door (Mo. App.), 105 S. W. 946;

Dailey v. River Raisin Paper Co., 269 Mich. 443, 257 N. W. 857;

Repka v. Fedders Mfg. Co., 267 N. Y. S. (App. Div.) 709, aff. 264 N. Y. 538, 191 N. E. 553.

CONCLUSION.

Petitioner's contention is that the decision of the Circuit Court of Madison County, Illinois, that petitioner was not entitled to compensation under the Illinois Workmen's Compensation Act, inasmuch as his injuries did not arise out of and in the course of his employment within the meaning of those words as used in the Illinois Compensation Act, was not open to question. For the purpose of this proceeding, this may be conceded, nor is there anything to the contrary in the decision of the Missouri Supreme Court. This ruling of the Illinois Circuit Court, however, did not dispense with the necessity for petitioner to show that he had some other right of recovery. This he attempted to do by showing only an alleged breach of a

duty which was dependent upon the master and servant relationship, and the Missouri Supreme Court, following the decisions of the Illinois Supreme Court, held, as it was bound to hold, that all common-law right of action by a servant against a master arising out of that relationship had been abolished by the Illinois Compensation Act. Therefore, since petitioner had sought to present no case, except such as was abolished by the Illinois Compensation Act, under the Illinois decisions he failed to make a case at common law.

It is respectfully submitted that there is no merit in the petition for a writ of certiorari, and that the writ should be denied.

Respectfully submitted,

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